IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODPUR

ORDER

S.B. Criminal Misc. Petition No.1386/2006

(Arun Singh Vs. Badri Narayan Soni)

Date of Order : September 20, 2007

HON'BLE MR. H.R. PANWAR, J.

Mr. Sunil Mehta for the petitioner
Mr. Manoj Bhandari for the respondent.

BY THE COURT :

By the instant misc. petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Code" hereinafter), the petitioner has challenged the Order dated 31st August, 2006 passed by the Additional Chief Judicial Magistrate No.2, Bikaner (for short "the trial court" hereinafter) in Criminal Case No.131/2003, whereby the trial court allowed the application filed by the accused non-petitioner under Section 91 of the Code and directed to produce the documents namely cash books from the year 2001 to 2005, income tax return, profit-losses accounts for the year 2001 to 2005.

Heard learned counsel for the parties and perused the impugned order.

Briefly stated facts giving rise to the case are that accused non-petitioner issued five cheques, each amounting to Rs.20,000/- in the month of December, 2002. When the cheques were presented to the Bank, the same were returned and dishonoured with the report that the holder of the Bank account has not sufficient amount to honour the cheques. On receipt of the intimation of dishonour of the cheques, notice demanding cheques amount was given to the non-petitioner demanding the payment of cheques amount within 15 days from the receipt of the notice. When the payment of cheques amount was not made, a compliant under Section 138 of the Negotiable Instruments Act, 1881(for short 'the Act') has been filed. During the pendency of the proceeding under Section 138 of the Act, an application was moved by the accused non-petitioner under Section 91 Cr.P.C. on the ground that he has paid the cheque amount in the year 2001 to 2002 and it has been recorded in the books of the petitioner, therefore, requested trial court to summon cash books, ledger, trading account, profit and losses account and balance sheet for the year 2001 to 2005.

Learned counsel for the non-petitioner submits that the petitioner is dealing with the money lending businesses and even after receiving the amount of the cheques, he has not returned the cheques issued by the non-petitioner and therefore, the account for 5 years ie. From the year 2001 to 2005 i.e. Cash book, ledger, trading account, profit and losses account and balance sheets are necessary to be produced in court so that non-petitioner can establish that he had already paid the cheques amount.

From perusal of the impugned order, it appears that the petitioner has already filed ledger account for the year 01.04.2002 to 31.03.2003 and income tax return for the assessment year 2002 to 2003 and profit and loss account for the year 2002 to 2003 before the learned trial court, therefore, there is no need to summon record of account books and returns from the year 2001 to 2005.

In this view of the matter, the learned trial court fell in error directing the petitioner to produce the documents by the impugned order and therefore, the same deserved to be set aside.

The misc. petition is allowed accordingly and the order impugned dated 31st August, 2006 passed by the trial court is set aside.

(H.R. PANWAR), J.

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